IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3422 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULAMNABI MIYAMOHAMMAD & 3 - Petitioner(s)

Versus

NATVARLAL PRABHUBHAI & 6 - Respondent(s)

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Appearance :

MS SHAKUNTALA V SONI for Petitioner(s) : 1 - 4.
None for Respondent(s) : 1 - 4.
Mr. MR Mengdey, AGP for Respondent(s) : 5 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department dated 14th June 1990 in Revision Application No. 4/89 in dismissing the said

revision application and confirming the order passed by the Collector, Surat, dated 29.11.1988 in suo motu Revision No. 54/88.

2. The land bearing Survey No. 135 and 146 situate at Village Bhestan was owned by Natvarlal Prabhubhai, Jayantilal Prabhubhai and Ranchhodbhai Vallabhbhai; the aforesaid land was put to auction by the Special Recovery Officer on 26.10.1978; the petitioners purchased the said land in public auction and their names were mutated in the revenue records vide Entry No. 904 on 30th October 1978; and the said land was a new tenure land. After a period of 10 years the said auction came to be taken under suo motu revision by the Collector, Surat while exercising suo motu powers by issuing show cause notice dated 19.7.1988 and the petitioners/original-landowners were required to show cause why the said auction should not be declared as invalid as prior permission of the competent authority under the Urban Land Ceiling & Regulation Act was not obtained. The Collector, Surat, by order dated 29.10.1988 set aside the auction with respect to the land bearing Survey No. 146 & 135 dated 26.10.1978 only on the ground that prior permission of the competent authority under the provisions of the Urban Land Ceiling & Regulation Act was not obtained. Being aggrieved and dissatisfied with the same, the petitioners preferred revision application before the Additional Chief Secretary (Appeals), Revenue Department being

Revision Application No. 4/89 who by order dated 14.6.1990/19.11.1990 dismissed the said revision application. Being aggrieved and dissatisfied with the aforesaid order passed by the Additional Secretary (Appeals) in Revision Application No. 4/1989 the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. It is the contention on behalf of the petitioners that apart from the fact that the petitioners purchased the land in question by registered sale deed in the public auction held by the Special Recovery Officer the proceedings are initiated by the Collector after a period of 10 years, i.e., after unreasonable period; in the meantime the equities have been changed as the petitioners have already invested amounts; the exercise of powers suo motu by the Collector after unreasonable period was not permissible; and therefore it is requested to allow the present Special Civil Application.

4. Shri MR Mengdey, learned AGP, though tried to support the orders passed by both the authorities below, he is not in position to dispute the fact that the auction came to be held in the year 1978 and necessary entry was mutated in the Revenue record in the year 1978 itself and that the proceedings came to be initiated by the Collector after a period of 10

years.

5. As stated hereinabove, the petitioners have purchased the land in question in a public auction held by the Special Recovery Officer as far back as in the year 1978, on 26.10.1978 and that necessary entry was mutated in the revenue record on 30th October 1978. It is not in dispute that suo motu proceedings came to be initiated by the Collector after a period of 10 years, i.e., in the year 1988, i.e., after an unreasonable period. As held by the Hon'ble Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, reported in (1997) 6 S.C.C. Page 71 and other cognate matters, where there is no specific time limit fixed the suo motu powers are required to be initiated within a reasonable time. In the facts of the present case, 10 years' period cannot be considered to be a reasonable period. On the above ground and in view of the reason that the powers are exercised by the Collector after an unreasonable period which was not permissible, the present Special Civil Application is required to be allowed.

6. For the reasons stated above, the petition succeeds. The order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 14.6.1990/19.11.1990 in Revision Application SRD No. 4/1989 as well as the order passed by the Collector, Surat, dated 29.11.1988 in Suo Motu

Revision Case No. 54/1998 are hereby quashed and set aside. Consequently, the Entry No. 904 is restored. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.